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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/748,889	12/27/2000	Frederick W. Ryan JR.	F-212	5705
919	7590	09/21/2009	EXAMINER	
PITNEY BOWES INC. 35 WATERVIEW DRIVE MSC 26-22 SHELTON, CT 06484-3000				SHERR, CRISTINA O
ART UNIT		PAPER NUMBER		
3685				
			NOTIFICATION DATE	DELIVERY MODE
			09/21/2009	ELECTRONIC

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1 UNITED STATES PATENT AND TRADEMARK OFFICE

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4 BEFORE THE BOARD OF PATENT APPEALS

5 AND INTERFERENCES

6

7

8 *Ex parte* FREDERICK W. RYAN, JR.,

9 THOMAS J. FOTH,

10 CATHY C. MORRISSEY,

11 STEVEN J. PAULY,

12 and

13 LEON A. PINTSOV

14

15

16 Appeal 2009-004868

17 Application 09/748,889

18 Technology Center 3600

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21 Decided: September 18, 2009

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25 *Before:* MURRIEL E. CRAWFORD, ANTON W. FETTING, and JOSEPH

26 A. FISCHETTI, *Administrative Patent Judges.*

27

28 CRAWFORD, *Administrative Patent Judge.*

29

30

31 DECISION ON APPEAL

1 STATEMENT OF THE CASE

2 Appellants appeal under 35 U.S.C. § 134 (2002) from a final rejection
3 of claims 1 to 31. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

4 Appellants invented a mail piece verification system and method.
5 (Spec. 1).

6 Claim 1 under appeal reads as follows:

7 1. A mail piece verification system for
8 processing a mail piece in a path of travel, the
9 mail piece having associated therewith mail piece
10 data, the system comprising:

11 an incoming mail processing center for
12 receiving the mail piece and obtaining the mail
13 piece data, the incoming mail processing center
14 including a plurality of mail processing machines
15 that perform automated processing of mail pieces;

16 an outgoing mail processing center located
17 downstream in the path of travel from the
18 incoming mail processing center, the outgoing
19 mail processing center including a plurality of mail
20 processing machines that perform automated
21 processing of mail pieces; and

22 a data center in operative communication
23 with the incoming mail processing center and the
24 outgoing mail processing center; and

25 wherein:

26 the incoming mail processing center uploads
27 the mail piece data to the data center;

28 the data center performs a verification check
29 on the mail piece data and downloads instructions
30 based upon the verification check to the outgoing
31 mail processing center; and

32 the outgoing mail processing center uses the
33 instructions to control operation of at least one of
34 the mail processing machines located at the
35 outgoing mail processing center to process the
36 mail piece.

1 The prior art relied upon by the Examiner in rejecting the claims on
2 appeal is:

3	Hunter	US 5,280,531	Jan. 18, 1994
4	Moore	US 5,917,925	Jul. 29, 1999
5	Fleming	US 5,953,710	Sep. 14, 1999

6 The Examiner rejected claims 1 to 5 and 7 to 31 under 35 U.S.C. §
7 103(a) as being unpatentable over Hunter in view of Moore.

8 The Examiner rejected claim 6 under 35 U.S.C. § 103(a) as being
9 unpatentable over Hunter in view of Moore and Fleming.¹

ISSUES

12 Have Appellants shown that the Examiner erred in rejecting claims 1,
13 15, and 27 under 35 U.S.C. § 103(a) because Moore does not disclose
14 instructions downloaded from a data center to control operation of a mail
15 processing machine that performs automated processing of the mail pieces to
16 process the mail piece?

17 Have Appellants shown that the Examiner erred in rejecting claims 4,
18 7, and 13 under 35 U.S.C. § 103(a) because Moore does not disclose or
19 teach the recitations in claims 4, 7, and 13?

20 Have Appellants shown that the Examiner erred in rejecting claims 5,
21 8, and 11 under 35 U.S.C. § 103(a) because Hunter does not disclose or
22 teach the recitations in claims 5, 8, and 11?

¹ The Examiner did not list Fleming in the Answer in the list of references or in the statement of the rejections. However, Fleming was included in the Final Rejection and the grounds of rejection in the Appeal Brief. The Answer states that Appellants' grounds of rejection in the Brief is correct. Therefore, we will consider the absence of Fleming in the Answer to have been inadvertent.

FINDINGS OF FACT

2 Hunter discloses an automatic mail piece verification system 40 that
3 include an incoming mail processing center for receiving mail and an
4 outgoing mail processing center located downstream in the path of travel of
5 the incoming mail processing center (Fig. 1; col. 2, ll. 47 to 55; col. 3, ll. 6 to
6 24). The system 40 determines if the postage amount is a valid amount for
7 the class of mail (col. 5, ll. 56 to 63). The system also diverts the mail piece
8 to a diverter mechanism 30 if the postage amount is not correct by use of a
9 control signal to activate the diverter mechanism (col. 5, ll. 64 to 68).
10 Hunter discloses that mail data is input before the postage amount is checked
11 (Fig. 2).

12 Moore discloses a plurality of mail processing machines that perform
13 automated processing of mail pieces (col. 1, ll. 14 to 19; col. 9, ll. 59 to 67).
14 A field reader is used to inspect the mail to determine whether the mail is
15 correctly routed (col. 13, ll. 39 to 41). The process ensures that the mail
16 piece is properly routed (col. 14, ll. 5 to 9). The field reader communicates
17 with a local host computer 14 and the control computer 12 to authenticate
18 marks on the mail piece and to track the mail piece (col. 13, ll. 17 to 23).

PRINCIPLES OF LAW

21 On appeal, Applicants bear the burden of showing that the Examiner
22 has not established a legally sufficient basis for combining the teachings of
23 the prior art. Applicants may sustain their burden by showing that where the
24 Examiner relies on a combination of disclosures, the Examiner failed to

1 provide sufficient evidence to show that one having ordinary skill in the art
2 would have done what Applicants did. *United States v. Adams*, 383 U.S. 39,
3 52 (1966).

4

5 ANALYSIS

6 We are not persuaded by Appellants' arguments that the Examiner
7 erred in rejecting claims 1, 15, and 27. The Examiner has made extensive
8 factual findings in the Non Final Office Action dated May 18, 2007, with
9 respect to the elements of these claims. The bulk of Appellants' arguments
10 regarding the rejection of these claims merely restates the elements of the
11 claim language and simply argues that the elements are missing from the
12 Hunter reference. However, the Appellants do not explain why the
13 Examiner's explicit findings are in error. As these arguments do not explain
14 why the Examiner's findings are in error, we hold that these arguments do
15 not establish error on the part of the Examiner. We note that arguments not
16 presented by the Appellant in the brief are deemed waived unless good cause
17 is shown as to why they were not presented. 37 C.F.R. § 41.37(c)(1)(vii)
18 (2008).

19 In regard to the Appellants' argument that Moore does not disclose
20 automated processing of mail pieces, a data center that downloads
21 instructions to the outgoing mail processing center or a method that includes
22 the step of downloading instructions to the outgoing mail processor, we note
23 that an applicant cannot show non-obviousness by attacking references
24 individually where, as here, the rejections are based on a combination of
25 references. *In re Keller*, 642 F.2d 413, 426 (CCPA 1981). The Examiner
26 has relied on Hunter not Moore for teaching these features of the claims.

1 In view of the foregoing, we will sustain the Examiner's rejection of
2 claims 1, 15, and 27. We will also sustain this rejection as it is directed to
3 claims 2, 3, 16, 17, 21, 28, and 29 dependent thereon because the Appellants
4 have not argued the separate patentability of these claims.

5 We are not persuaded of error on the part of the Examiner by
6 Appellants' argument that Moore does not disclose or teach the recitations in
7 claims 4 and 7. The Examiner found that the subject matter of dependent
8 claims 4 and 7 is disclosed in Moore at column 13, lines 30 to 55. The
9 Appellants do not explain why this portion of Moore does not disclose the
10 subject matter of claims 4 and 7 but only restates the recitations in the claims
11 and state that Moore does not disclose the subject matter recited. Weighing
12 these arguments which are not supported by further explanation against the
13 Examiner's findings, we hold that the Appellants have not shown error in the
14 Examiner's findings.

15 Further, as we found above, Moore discloses that a field reader, in
16 communication with the local host computer and the control computer is
17 used to inspect the mail to determine whether the mail is correctly routed
18 and that the process ensures that the mail piece is properly routed. As such,
19 Moore does disclose that the system determines a delivery route for the mail
20 pieces and sends instructions to the particular outgoing mail center related to
21 the mail piece.

22 Therefore, we will sustain the Examiner's rejection of claims 4 and 7.

23 We agree with the Appellants that the Examiner erred in rejecting
24 claims 5, 8, and 11 because prior art does not disclose using the service class
25 to establish priority for the upload of mail piece data. While Hunter
26 discloses that the system checks to see if the postage amount is correct for

1 the class of mail, there is no disclosure that the class of mail is used to
2 determine the priority for the upload of mail data. Indeed, Hunter discloses
3 that mail data is input before the postage amount is checked. In addition,
4 while Moore discloses that markings and indicia are used to determine
5 whether the mail piece is correctly routed, Moore does not disclose that the
6 class of the mail is used to prioritize upload of mail data.

7 Therefore, we will not sustain the Examiner's rejection of claims 5, 8,
8 and 11, or claims 9 and 10 to 14 dependent thereon. We will also not sustain
9 the rejection as it is directed to claims 18 to 20, 22 to 26, 30, and 31 because
10 these claims also include the subject matter that the service class is used to
11 establish a priority for a download of data.

12 We will also sustain the rejection of claim 6 under 35 U.S.C. § 103(a)
13 as being unpatentable over Hunter in view of Moore and Fleming because
14 claim 6 includes the subject matter that the service class is used to establish
15 a priority for the download of data and Fleming does not cure the deficiency
16 noted above for Hunter and Moore.

17

18 CONCLUSIONS OF LAW

19 On the record before us, Appellants have not shown that the Examiner
20 erred in rejecting claims 1 to 4, 7, 15, 16, 17, 21, and 27 to 29 under 35
21 U.S.C. § 103(a). The Appellants have shown that the Examiner erred in
22 rejecting claims 5, 6, 8 to 14, 18 to 20, 22 to 26, 30, and 31.

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DECISION

2 The Examiner's rejection of claims 1 to 4, 7, 15, 16, 17, 21, and 27 to
3 29 is sustained. The Examiner's rejection of claims 5, 6, 8 to 14, 18 to 20,
4 22 to 26, 30, and 31 is not sustained.

5 No time period for taking any subsequent action in connection with
6 this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2007).

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8 AFFIRMED-IN-PART

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19 SHELTON, CT 06484-3000

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